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25 JUL 1988

ICS 4738-88
20 July 1988

MEMORANDUM FOR: Mr. James H. Taylor
Executive Director, Central Intelligence Agency

FROM: Lieutenant General Edward J. Heinz, USAF
Director, Intelligence Community Staff

SUBJECT: Congressionally Directed Action from House Permanent Select Committee on Intelligence (HPSCI) Report 100-591, Part I, Intelligence Authorization Act for FY 1989

1. The unclassified House Report on the FY 1989 Intelligence Authorization Act contained a number of requests for actions to be undertaken by Community elements in response to specific Congressional concerns. Listed below is an action assigned to your Agency.

Page 1 Equal Employment Opportunity Plan

The DCI is expected to submit to the House Permanent Select Committee on Intelligence a report setting forth an analysis of each equal employment opportunity group's representation in the CIA and propose a plan for rectifying any underrepresentation of any such equal employment opportunity group. This report and plan is due to the Committee on 30 September 1991.

Interim reports are to be submitted to the Committee on 1 February 1989, 1990, and 1991.

2. Attached for your reference is a copy of the report containing the above request (Section 403). The Intelligence Community Staff's CIA Program Monitor, [redacted] should be kept apprised of the efforts of this action as they evolve. If any questions arise, [redacted] Acting Chief of the Legislative Liaison Staff, can be reached at [redacted] 25X1 25X1 25X1

[redacted] 25X1

Edward J. Heinz
Lieutenant General, USAF

Attachment: a/s

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ATTACHMENT
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100TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 100-591
Part 1

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1989

APRIL 29, 1988.—Ordered to be printed

Mr. STOKES, from the Permanent Select Committee on Intelligence, submitted the following

REPORT

[To accompany H.R. 4387]

The Permanent Select Committee on Intelligence, to whom was referred the bill (H.R. 4387) to authorize appropriations for fiscal year 1989 for the intelligence and intelligence-related activities of the U.S. Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill do pass.

The amendment is as follows:

On page 8, after line 6, insert the following:

EQUAL EMPLOYMENT OPPORTUNITY PLAN

SEC. 403. Ninety days after enactment of this Act, the Director of Central Intelligence and the Secretary of Defense shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report setting forth an analysis of each equal employment opportunity group's representation in the Central Intelligence Agency and the National Security Agency respectively and proposing a plan for rectifying any underrepresentation of any such equal employment opportunity group by September 30, 1991.

(b) The Director of Central Intelligence and the Secretary of Defense shall each submit interim reports on February 1 of 1989, 1990, and 1991 concerning the Central Intelligence Agency and the National Security Agency respectively detailing the efforts made, and the progress realized, by each such agency in achieving the objectives of

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each such plan, including, but not limited to, the number of applications from, and the hiring, promotion, and training of, members of equal employment opportunity group."

(c) For purposes of this section, the term "equal employment opportunity group" means—

(A) white women,
(B) black men,
(C) black women,
(D) Hispanic men,
(E) Hispanic women,
(F) Asian American and Pacific Islander men,
(G) Asian American and Pacific Islander women,
(H) Native American and Alaskan Native men, or
(I) Native American and Alaskan Native women.

PURPOSE

The bill would:

(1) Authorize appropriations for fiscal year 1989 for (a) the intelligence and intelligence-related activities of the U.S. Government, (b) the Intelligence Community Staff and (c) the Central Intelligence Agency Retirement and Disability System;

(2) Authorize the personnel ceilings on September 30, 1989 for the intelligence and intelligence-related activities of the U.S. Government and exempt the Defense Intelligence Agency and the Defense Mapping Agency from Defense Agency manpower reductions;

(3) Permit the Director of Central Intelligence to authorize personnel ceilings in fiscal year 1989 for any intelligence elements up to 2 percent above the authorized levels;

(4) Prohibit procurement of more than three GUARDRAIL RC-12K aircraft and sensors until the submission to Congress of a report on tactical airborne reconnaissance.

(5) Establish restrictions on, and provide specific authorizations of appropriations and transfer authority to, the Federal Bureau of Investigation with respect to its foreign counterintelligence activities;

(6) Establish restrictions on support for military or paramilitary operations in Nicaragua;

(7) Provide authority to the Director of Central Intelligence during fiscal year 1989 to grant monetary or other relief to former employees of the Central Intelligence Agency whose careers were adversely affected as a result of allegations concerning their loyalty;

(8) Establish a five-year demonstration project at the New York Field Division of the Federal Bureau of Investigation to ascertain the effects of certain lump sum and periodic payments on recruitment and retention of personnel and on field operations of the New York Division;

(9) Clarify the Secretary of Defense's authority to use nonappropriated funds for foreign cryptologic support;

(10) Establish a new Assistant Secretary of Defense for Intelligence; and

(11) Make technical corrections to the Defense Intelligence Agency's authority to withhold from public disclosure organizational and personnel information.

OVERALL PERSPECTIVE ON THE INTELLIGENCE BUDGET

COMMITTEE INTENT

The classified schedule of authorizations and the detailed explanation found in the classified annex to this public report contain a thorough discussion of all budget issues considered by the committee and are available to all Members of the House. The schedule of authorizations lists the dollar amounts and personnel ceilings for all the intelligence and intelligence-related programs authorized by the bill. The schedule is directly incorporated into, and is integral to, the bill itself. It is the intent of the committee that all intelligence programs discussed in the annex to this report be conducted in accordance with the guidance and limitations contained therein.

SCOPE OF COMMITTEE REVIEW

The National Foreign Intelligence Program budget consists of resources of the following departments, agencies, and other elements of the Government: (1) the Central Intelligence Agency; (2) The Department of Defense; (3) the Defense Intelligence Agency; (4) the National Security Agency; (5) the Departments of the Army, Navy and Air Force; (6) the Department of State; (7) the Department of the Treasury; (8) the Department of Energy; (9) the Federal Bureau of Investigation; (10) the Drug Enforcement Administration; and (11) the Intelligence Community Staff of the Director of Central Intelligence.

The Department of Defense Tactical Intelligence and Related Activities (TIARA) are a diverse array of reconnaissance and target acquisition programs which are a functional part of the basic military force structure and provide direct information support to military operations. TIARA, as defined by the Joint Chiefs of Staff and the Secretary of Defense, includes those activities outside the Defense Intelligence program which respond to military commanders for operational support information as well as to national command, control, and intelligence requirements. These military intelligence activities also fall within the jurisdiction of the Committee on Armed Services.

During February and March 1988, the Program and Budget Authorization Subcommittee conducted a series of 11 hearings involving a total of more than 30 hours of testimony with witnesses from each major intelligence and intelligence-related program. These budget hearings resulted in written responses to many additional questions.

OVERALL COMMITTEE FINDINGS AND RECOMMENDATIONS

The administration requested a small percentage of real growth for fiscal year 1989 over the amount Congress appropriated for intelligence in fiscal year 1988. The committee determined that the total amount requested for fiscal year 1989 was approximately correct. The committee recommends a slightly lower level of funding

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than that requested by the President. Some proposals have been recommended for deferral or deletion, while a few have been increased. The overall impact of the recommendation is a small reduction in the request. The committee believes that the recommended authorization is a reasonable balance between needed capabilities and prudent cost.

It should be understood that the intelligence budget is largely a subset of the defense budget. Almost all of the intelligence budget is contained within the defense budget both for reasons of security and because the great majority of intelligence activities are conducted by elements of the Department of Defense. Thus, increases and decreases for intelligence are largely changes within the defense budget and are not direct changes to the federal budget as a whole.

Consideration of Amendments

An amendment was adopted during consideration of the bill which would require the Central Intelligence Agency and the National Security Agency to adopt plans to address underrepresentation of minority groups at each agency by 1991 and to make yearly interim reports of the progress achieved in addressing such underrepresentation.

Section-by-Section Analysis of Bill as Reported

TITLE I—INTELLIGENCE AND INTELLIGENCE-RELATED ACTIVITIES

Sections 101–103

Section 101(a) lists the departments and agencies for whose intelligence and intelligence-related activities the bill authorizes appropriations for fiscal year 1989.

Section 101(b) provides that three of the six GUARDRAIL RC-12K aircraft and senor suites authorized to be appropriated by the bill in fiscal year 1989 may not be procured until the Committee on Armed Services and the Permanent Select Committee on Intelligence receive a report from the Department of the Army setting forth in detail the long-range plans and budgetary commitments to meet future requirements for tactical airborne reconnaissance in support of United States Army corps. In particular, this report should address the contribution that remotely piloted vehicles or other follow-on reconnaissance assets can make to tactical airborne reconnaissance at the corps level.

Section 101(c) pertains to the foreign counterintelligence activities of the Federal Bureau of Investigation. Paragraph (c)(1) provides that the funds authorized to be appropriated for the FBI's foreign counterintelligence activities may be used only for such activities and not for any other Bureau activities. Historically, the Bureau, which assigns a high priority to its foreign counterintelligence activities, has underspent funds authorized for this purpose. The committee wishes to ensure that foreign counterintelligence activities receive the level of effort requested by the President and authorized by Congress.

Paragraph (c)(2) requires that an amount of funds specified in the Schedule of Authorizations for the foreign counterintelligence activities of the FBI be obligated for the development and procurement of needed counterintelligence technical equipment.

Paragraph (c)(3) provides that $15,100,000 of the funds authorized to be appropriated to the Defense Intelligence Agency in fiscal year 1989 shall be transferred to the FBI for its foreign counterintelligence activities as requested in the President's fiscal year 1989 budget request.

Section 101(d) concerns authority provided by Section 803 of the Intelligence Authorization Act for Fiscal Year 1986 (5 U.S.C. 9101). Section 803 permits the Department of Defense, the Office of Personnel Management and the Central Intelligence Agency (and, by later amendment, the Federal Bureau of Investigation) to obtain state and local criminal history record information for use in security checks. Section 803 required these Federal agencies to enter into agreements to indemnify states or localities for claims against them arising from the disclosure or use of the criminal history record information obtained by means of this statute. The requirement for such indemnification agreements expires three years after enactment of the statute. Section 803(b) of the 1986 Act, however, required a report from the Department of Justice (in consultation with the affected Federal agencies) concerning the effect of requiring such indemnification agreements. That report, which was due in December, 1987, has never been submitted by the Department. Failure to provide this report has frustrated the intent of Congress, which was to have a full year before expiration of the indemnification requirement to review the report and consider whether the indemnification requirement should continue, lapse, or be modified. Accordingly, Section 101(d) extends the expiration date for the indemnification requirement until one year after the submission of the report required by Section 803(b) of the fiscal year 1986 Act.

Section 102(a) makes clear that details of the committee's recommendations with respect to the amounts authorized to be appropriated and applicable personnel ceilings in fiscal year 1989 for intelligence and intelligence-related activities under title I are contained in a classified schedule of authorizations. The schedule of authorizations is incorporated into the bill by this section. The details of the schedule are explained in the classified annex to this report.

Section 102(b) provides that the numbers of non-headquarters personnel of the Defense Intelligence Agency (DIA) and the Defense Mapping Agency (DMA), shall not be reduced, nor counted for purposes of determining how many Department of Defense personnel should be reduced, in accordance with the provisions of Section 601 of the Department of Defense Reorganization Act of 1986. Section 601 requires the Secretary of Defense to make certain reductions in both the headquarters and non-headquarters personnel of the Department of Defense based on the number of such personnel as of September 30, 1986. Section 102(b) would exempt DIA and DMA only from the non-headquarters cuts while holding other defense agencies and field activities harmless from an increased share of personnel reductions required by Section 601. The committee achieved this result by reducing the base number of non-headquarters personnel against which Section 601 reductions of non-headquarters personnel must be taken.

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The committee felt that Section 102(b) was necessary in light of the increase in the number of requirements for intelligence and related products levied upon both DIA and DMA in recent years. These increased demands have been either supported or created by the Congress and have led to the authorization of additional personnel at both agencies. It was the committee's reasoning that its support for more and better analysis and mapping products carried with it an obligation to provide the personnel to perform these tasks without regard to overall reductions in DoD manpower. The committee did feel, however, that some reduction in headquarters management was acceptable for both agencies.

The committee initially recommended an identical provision with respect to fiscal year 1988, the first two fiscal years in which the reductions in DoD manpower are required to be made. In conference, the committee agreed to nonbinding sense of Congress language urging the Secretary of Defense not to make reductions at DIA and DMA. The Secretary eventually did order such reductions, although he has also requested repeal of the statutory requirement to make reductions in DoD manpower. The committee does not address this larger request but agrees that, with respect to Defense agencies with intelligence and related missions, it would be inconsistent with the high priority placed by the committee and the executive branch on intelligence support to military forces to require reductions in DIA and DMA at a time when the committee is recommending an increase in personnel, as it has over the past several years.

Section 193 permits the Director of Central Intelligence to authorize the personnel strength of any intelligence element to exceed the fiscal year 1989 authorized personnel levels by no more than 2 percent if he determines that doing so is necessary for the performance of important intelligence functions. The Director must notify the two intelligence committees promptly of any exercise of authority under the section.

The committee emphasizes that the authority conveyed by Section 103 is not intended to permit the wholesale raising of personnel strength in each or any intelligence component. Rather, the section provide the Director of Central Intelligence with flexibility to adjust personnel levels temporarily for contingencies and for overages caused by an imbalance between hiring of new employees and attrition of current employees. The committee does not expect the Director of Central Intelligence to allow heads of intelligence components to plan to exceed personnel levels set in the schedule of authorizations except for the satisfaction of clearly identified hiring needs which are consistent with the authorization of personnel strengths in this bill. In no case is this authority to be used to provide for positions denied by this bill.

Section 104

Section 104 provides that funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States may be obligated and expended during fiscal year 1988 to provide funds, materiel or other assistance to the Nicaraguan resistence to support military or paramilitary operations in Nicaragua only as authorized pursuant to Section 101 and

as specified in the Classified Schedule of Authorizations referred to in Section 102, Section 502 of the National Security Act of 1947, or any provision of law specifically providing such funds, materiel or assistance, such as is contained in H.J. Res. 523 of the 100th Congress, a joint resolution providing assistance and support for peace, democracy and reconciliation in Central America (Public Law 100-276).

Section 104 continues in force the provisions of Section 104 of the Intelligence Authorization Act for Fiscal Year 1988 (Public Law 100-178), except that it applies to all agencies or entities of the United States, not just those involved in intelligence activities, as the Fiscal Year 1988 Act did. Its principal effect is to ensure that only funds specifically authorized by the bill or those specifically authorized by separate legislation approved by the House and Senate may be provided to assist the military or paramilitary operations of the Nicaraguan resistance. Section 104, in effect, preserves the position that any military or paramilitary assistance provided to the Nicaraguan resistance must be openly requested and approved by the Congress.

Section 104 would prohibit during fiscal year 1989, as does Section 104 of the Fiscal Year 1988 Act during fiscal year 1988, the use of funds from the CIA's Reserve for Contingencies for assistance to the military or paramilitary operations of the Nicaraguan resistance except to the extent approved by reprogramming or transfer approval action submitted to the appropriate committees of the Congress, which would include the intelligence and appropriations committees of the House and Senate. Of course, funds from any other accounts appropriated to the CIA, the Department of Defense, or any other agency or entity could not be transferred to assist the military or paramilitary operations of the Nicaraguan resistance without reprogramming or transfer approval by the same committees.

This result stems in particular from the application of Section 502 of the National Security Act of 1947 which provides that funds may not be spent for an intelligence activity unless they have been specifically authorized and, in the case of the Reserve, provides that funds may be provided for a particular intelligence activity if the Director of Central Intelligence has given appropriate notice to the intelligence committees of the House and Senate. As noted above, funds authorized during fiscal year 1989 for the CIA's Reserve for Contingencies are not available for support to the military or paramilitary activities of the Nicaraguan resistance. (Funds requested for the Reserve would ordinarily be available to fund any intelligence activity, other than one for which Congress had denied funds. The committee has denied use of the Reserve in fiscal year 1989 to assist the military or paramilitary operations of the Nicaraguan resistance.)

Further, since assistance to the military or paramilitary operations of the Nicaraguan resistance is a matter of significant Congressional interest, any transfer of funds from other accounts for this purpose would require a reprogramming or transfer approval action. Finally, Subsection 502(b) of the National Security Act of 1947 does not permit the funding of intelligence activities for which funds have been denied by Congress. Even if substantial changes in

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such proposed activities occur, the only avenue to secure reconsideration of such denial is through a reprogramming or transfer approval submitted to the appropriate committees.

As under current law, the provision of intelligence information and advice to the Nicaraguan resistance is authorized by Section 104. These activities may continue as provided for in accordance with the joint explanatory statement of managers to accompany the conference report on H.R. 2419 of the 99th Congress (H. Rept. 99-373, pages 14 through 17). No other support to the military or paramilitary operations of the Nicaraguan resistance is authorized by the bill.

The committee anticipates that, if both Houses approve legislation providing additional assistance to the Nicaraguan resistance, regardless of whether or not such legislation is approved prior to or subsequent to enactment of the Fiscal Year 1989 Intelligence Authorization Act, the terms and conditions of such legislation will control the nature and extent of U.S. assistance to the military or paramilitary operations of the Nicaraguan resistance to the extent they are inconsistent with Section 104. If there is no such legislation or if such legislation were silent on matters covered by Section 104, then the provisions and conditions of Section 104 would control on matters involving any assistance to the military or paramilitary operations of the Nicaraguan resistance.

TITLE II—INTELLIGENCE COMMUNITY STAFF

Sections 201-203

Section 201 authorizes the appropriation of $23,745,000 for fiscal year 1989 for the Intelligence Community Staff (IC Staff), which provides the Director of Central Intelligence with staff assistance to carry out his intelligence community responsibilities. The IC Staff supports the Director of Central Intelligence in the execution of is responsibilities to develop, review, and approve the National Foreign Intelligence Program budget, to evaluate the performance of foreign intelligence activities, and to develop issues, goals, and other required guidance for the intelligence community.

Sections 202 and 203 provide certain administrative authorities for the Intelligence Community Staff.

Section 202(a) authorizes 244 full-time personnel for the staff. The Intelligence Community Staff is composed of a permanent cadre, detailed community personnel, and contract hirees. The purpose of section 202(b) is to authorize this method of staffing and to require that detailed employees represent all appropriate elements of the Government, including those engaged in intelligence-related activities. Section 202(c) requires that personnel be detailed on a reimbursable basis except for temporary assignments. The Staff's authorized size, in the opinion of the committee, is sufficient for the duties which the Staff performs. This provision is intended to insure that its ranks are not swelled by detailees, the personnel costs for whom are not reimbursed to their parent agency.

Section 203 provides the Director of Central Intelligence with authority to manage the activities and to pay the personnel of the Intelligence Community Staff because the Staff is not otherwise authorized by law. However, it is the committee's intent that in the

case of detailed personnel, the Director's authority to discharge personnel shall only extend to discharging detailed personnel from service at the Intelligence Community Staff and not from Federal employment or military service.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Section 301

Section 301 authorizes appropriations for the Central Intelligence Agency Retirement and Disability System (CIARDS) in the amount of $144,500,0000 for fiscal year 1989. The Central Intelligence Agency Retirement Act of 1964 for Certain Employees (Public Law 88-643) authorized the establishment of CIARDS for a limited number of Agency employees and authorized the establishment and maintenance of a fund from which benefits would be paid to qualified beneficiaries.

The requested CIARDS funds will finance:

(1) Interest on the unfunded liability;

(2) The cost of annuities attributable to credit allowed for military service;

(3) Normal cost benefits not met by employee and employer contributions;

(4) The increase in unfunded liability resulting from liberalized benefits and Federal pay raises.

The benefits structure of CIARDS is essentially the same as for the Civil Service Retirement System with only minor exceptions. These exceptions are: (a) annuities are based upon a straight 2 percent of high 3-year average salary for each year of service, not exceeding 35; (b) under stipulated conditions a participant may retire with the consent of the Director, or at his direction be retired, at age 50 with 20 years service, or a participant with 25 years of service may be retired by the Director regardless of age; and (c) retirement is mandatory at age 65 for personnel receiving compensation at the rate of GS-18 or above, and at age 60 for personnel receiving compensation at a rate less than GS-18, except that the Director may, in the public interest, extend service up to 5 years.

Annuities to beneficiaries are provided exclusively from the CIARDS fund maintained through: (a) contributions, currently at the rate of 7 percent, deducted from basic salaries of participants designated by the Director; (b) matching Agency contributions from the appropriation from which salaries are paid, based on the actual rate of contributions received from participants; (c) transfers from the Civil Service Retirement and Disability Fund representing employee and matching employer contributions for service of Agency employees prior to the date of their participation in CIARDS, and contributions for service of integrated Agency employees included in CIARDS following termination of integrated status; (d) income on investments in U.S. Government securities; and (e) beginning in 1977, direct appropriations consistent with the provisions of Public Law 94-552.

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TITLE IV—GENERAL PROVISIONS

Section 401

Section 401 provides that the authorization of appropriations by the bill shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

Section 402

Section 402 provides that appropriations authorized by the bill for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

Section 403

Section 403 requires the Director of Central Intelligence and the Secretary of Defense to submit 90 days after enactment a report setting forth an analysis of the representation of each minority group (termed equal employment opportunity in this section) at CIA and NSA, respectively, and proposing a plan for each agency that would address any underrepresentation of any such group by September 30, 1991. Both the Director and the Secretary are required to provide interim reports on February 1, 1989, 1990, and 1991 for their respective agencies detailing the efforts they have made, and the progress that has been realized by each agency in achieving the objectives of each plan. These reports must address, among other things, the number of applications from minority groups, and the hiring, the promotion and the training of members of such groups for each agency. Section 403(c) lists those minority groups who qualify as equal employment opportunity groups.

The committee's purpose in adopting this amendment was to give added emphasis to minority programs at both CIA and NSA. The committee regularly receives reports on such efforts and has noted some improvements in recent years. However, improvements in minority representation have occurred principally in the support field, while minority representation in professional fields lags behind. The committee was instrumental in beginning minority recruitment programs for critical skills personnel. Referred to as undergraduate training programs (UTP), these programs were designed to assist CIA and NSA in recruiting minorities for mainstream professional positions. While these programs have been implemented at both agencies, the committee also feels that much more could be done and bases this in large part on the testimony of the Director of Central Intelligence and the Director of the National Security Agency in appearances before the committee this year.

The committee wishes to emphasize that, in preparing the plans called for by Section 403, both the Director of Central Intelligence and the Director of the National Security Agency in appearances before the committee this year.

The committee wishes to emphasize that, in preparing the plans called for by Section 403, both the Director of Central Intelligence and the Secretary of Defense should construe the terms "representation" and "underrepresentation" as encompassing not only the

numbers of members of minority groups present in the total work force of an agency but also the grade or payband distribution of minority group members in both professional and support areas, as well as the projected career development of such groups.

The committee's purpose in requiring an EEO plan for each agency is not to set inflexible goals or hiring quotas, but rather to identify weaknesses in minority representation and participation, strengthen existing programs to acquire better minority representation and focus new resources and higher priority attention across the entire equal employment opportunity spectrum. The committee does not intend that numerically insignificant minority representation nationwide should require significant EEO programmatic efforts at either agency. However, the committee cautions that the essence of a successful equal employment opportunity approach is to predicate efforts at recruiting, hiring, promotion, and training of minority group members on the principle that the diversity, experience and often unique skills they bring to any workforce are a positive benefit. Such benefits should be understood, emphasized, and sought.

TITLE V—CENTRAL INTELLIGENCE AGENCY ADMINISTRATIVE PROVISIONS

Section 501

Section 501 would grant the Director of Central Intelligence the authority during fiscal year 1989 to grant monetary or other relief, including reinstatement and promotion, as the Director considers appropriate, to former employees whose career with the Agency had been adversely affected as a result of allegations concerning their loyalty to the United States. This authority mirrors similar authority provided in the Fiscal Year 1981 Intelligence Authorization Act. It is intended to address the peculiar circumstances of at least one former employee whose forced retirement from the Agency at a time of heightened concerns about loyalty to the United States has since been shown to have been unjustified. The authority provided by Section 501 is not reviewable in any court or other forum and is effective only to the extent that appropriated funds are available for the purpose of making payments to former employees. Finally, any exercise of the authority by the Director of Central Intelligence must be the subject of prior notification to the intelligence committees of the House and Senate.

TITLE VI—FBI COUNTERINTELLIGENCE AUTHORITIES

Section 601

Section 601 would establish a five-year demonstration project in the FBI's New York Field Division in order to ascertain the effects on recruitment and retention of personnel and on field operations, including counterintelligence operations, of lump sum and periodic payments to certain FBI personnel at that office. Such payments are intended to offset the high cost of living in the New York metropolitan area. Section 601 requires that the demonstration project be conducted by the FBI in conjunction with the Office of Personnel Management and include the provision of lump-sum payments to personnel assigned to the New York Field Division from another

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geographic area who agree to serve no less than a three-year tour in the New York office, as well as periodic payment to New York Office employees who are subject to a mobility requirement, i.e. essentially special agents and some specialized support personnel.

Section 601 is a joint recommendation by the Office of Personnel Management and the Federal Bureau of Investigation contained within their "Report on Recruitment, Retention and Operational Problems Facing the New York Office of the Federal Bureau of Investigation Caused by the High Cost of Living, and a Plan for Remedies," which was submitted to Congress pursuant to Section 502 of the Intelligence Authorization Act for Fiscal Year 1988. Congress had earlier proposed a demonstration project for the New York Field Division of the FBI but, at the Administration's request, deferred this suggestion until the submission of the joint report.

The Intelligence Committees have been advised for some time by the FBI that due to the high costs of living in the New York area, the FBI has a difficult time recruiting agents for such assignments, which impose a considerable financial burden on agents and their families under the current pay structure. Agents who are assigned to the New York office routinely attempt to leave at the earliest opportunity.

From the standpoint of the effectiveness of the FBI's Foreign Counterintelligence Program, the New York Field Division is critically important. To have employees assigned to this division against their wishes, at a considerable financial sacrifice, and to have them take the first opportunity to leave for the same reason, inevitably undermines the effectiveness of the New York office in terms of its counterintelligence responsibilities.

What distinguishes the circumstances of FBI employees in the New York area is that many FBI employees are transferred in and out of the New York area as a routine matter. The great majority are not recruited in New York and undergo significant hardship in terms of housing, commuting and overall living expenses by transferring into the New York metropolitan area. Most other Federal employees in the New York area are not required as a condition of employment to move to the New York area because they were already living in the area when they joined the Federal service. Further, the FBI, especially in its counterintelligence activities, possesses personnel requirements which differ from other Federal agencies and which impose burdens in excess of those imposed by other Federal employment in the New York area.

The committee agreed to the Administration's request for a demonstration project at the New York FBI office based on the description of Section 601 provided in the above-referenced report and, specifically, the following excerpt from the report's recommendation section:

> As envisioned by both agencies, a two-part allowance would be paid to employees transferred to New York under the mandatory transfer program. A lump sum would be paid at the time the employee is actually transferred to New York, upon the employee's written agreement to a specified term of service in New York.[1] For all employees in New York subject to a mobility requirement, an additional allowance would be paid, on a biweekly basis through the payroll system. (The amounts of these allowances would have to be determined.) These allowances would not become part of the employee's basic pay and would cease when the employee is reassigned out of new York.

The funds available to pay for the demonstration project must come from funds appropriated to the FBI that are available for that purpose, or funds reprogrammed for the demonstration project. The committee expects to be kept fully informed of actual rates for the allowances and lump-sum payments to be made under the program and any other compensatory elements of the program.

TITLE VII—DEPARTMENT OF DEFENSE INTELLIGENCE PROVISIONS

Section 701

Section 701 would revise Section 421 of Title 10, United States Code, to clarify the purposes for which both appropriated and non-appropriated funds may be used in the context of arangements with foreign countries for cryptologic support. Generally, appropriated funds may be used only as requested or otherwise provided by Congress. Nonappropriated funds may not be used for a purpose for which Congress has previously denied funds and may not be used to acquire items or services which the United States could have purchased with the use of appropriated funds. This latter limitation is not intended to prevent the sharing of costs of cooperative arrangements. It is aimed principally at preventing the augmentation of appropriations available to the Department of Defense for these purposes by soliciting or otherwise arranging gifts of other than nominal or de minimis amounts of equipment or services from other foreign governments. All uses of all funds expended pursuant to new Section 421 must be reported to the intelligence committees of the House and Senate pursuant to regulations or understandings reached between the intelligence committees and the Department of Defense. The committee is in the course of expanding and revising these understandings and procedures.

Section 702

Section 702 would create a new Assistant Secretary of Defense for Intelligence (ASD(I)) whose responsibilities would include the overall supervision of all intelligence and intelligence-related activities of the Department of Defense. This new Assistant Secretary would replace the currently specified Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD(C ^{3} I)) and would be assigned the intelligence responsibilities of the current ASD(C ^{3} I) as well as those currently assigned to the Deputy Under Secretary of Defense for Policy. Specifically, the committee believes all intelligence functions and responsibilities, including oversight, policy formulation, planning, programming,

[1] The terms of the service contract could be waived or amended upon a management-directed transfer out of New York.

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and budgeting, and those functions and responsibilities traditionally grouped together with intelligence activities, such as foreign counterintelligence and security programs and support to covert action, should be consolidated under the ASD(I). It is also the intention of the committee to streamline policymaking on intelligence and intelligence-related matters within the Department by providing that the new Assistant Secretary would report directly to the Secretary of Defense. However, the committee wishes to emphasize that creation of this new Assistant Secretary position would not affect the responsibilities of the Under Secretary of Defense for Acquisition to coordinate the acquisition of tactical intelligence and related systems.

For more than ten years, the committee has attempted to strengthen the management of intelligence and related activities within the Department of Defense. Intelligence is widely recognized as a unique area within DoD, not only because of its special security constraints and extensive cross service and inter-agency implications but because intelligence plays such a decisive role in supporting military operations and in the defense policy, planning and weapon acquisition processes. Despite this recognition, however, the Department decentralized management of intelligence matters in 1978. Subsequently, the committee has repeatedly been presented with evidence of ineffective staff support up to the Secretary, staff supervision and guidance downward to the Defense components, and inadequate representation of Defense interests in the intelligence community. Even basic mechanisms for ensuring that timely and accurate intelligence is made available to support military operations and decision making appear to be lacking.

From 1978 to 1984, the committee repeatedly expressed concern about the widespread division of responsibilities for intelligence matters within the Office of the Secretary of Defense. Although some improvement was noted with the establishment of an ASD(C ^{3} I) in late 1984, responsibilities for DoD intelligence matters remained fragmented. Further, in its examination of DoD intelligence management since 1984, the committee has observed ample evidence that combining the management of C ^{3} and Intelligence functions generally has not worked to the benefit of either function and to the extent that there has been success, it was attributable to the personality and background of the individual appointed as the ASD(C ^{3} I).

The committee's continued concern regarding the need to strengthen management of DoD intelligence was reinforced by the reports required to be submitted by the Goldwater-Nichols DoD Reorganization Act of 1986 which were received late last year. In two reports published by the Office of the Secretary of Defense staff and in the report of the Chairman of the Joint Chiefs of Staff, recommendations were advanced concerning the separation of C ^{3} and Intelligence and establishing an Assistant Secretary of Defense for Intelligence to centrally coordinate and focus on U.S. intelligence issues.

From the committee's perspective, the need for this new position is best exemplified by the difficulties the committee has experienced in the past in identifying which defense official to look to in seeking understanding of the intelligence needs of the Department,

as well as the reasons for various apparent intelligence shortfalls in suporting DoD operations. The committee notes that it is particularly convinced of the need to bring within the cognizance of the defense official responsible for foreign intelligence matters the responsibility for counterintelligence activities that tie so directly and critically into other Defense intelligence activities.

In an effort to minimize the impact of the creation of this new, consolidated intelligence portfolio within the Department of Defense, Section 702 creates an additional underdesignated Assistant Secretary of Defense so as to permit the Secretary to designate, if he wishes, a new Assistant Secretary to retain the portfolio of Command, Control, and Communications held today by the assistant Secretary of Defense for Command, Control, Communications and Intelligence.

Section 703

Section 703 makes technical revisions to, and redesignates, Section 1607 of Title 10, United States Code, which permits the Defense Intelligence Agency to withhold from disclosure information about its personnel and organization, in order to conform it more closely to the format of Title 10. No substantive revision of DIA's current authority is intended.

Additional Issues

Last year in the Classified Annex to the Intelligence Authorization Bill, the committee commented on the proposal to provide a signals intelligence (SIGINT) capability to National Guard units. The committee noted that a dispute between the National Security Agency and the Army concerning the control of the assets had not been resolved. The committee questioned the need for such a capability based on Army Active and Reserve Component capabilities and the known equipment shortfalls in the units. The committee requested that the Assistant Secretary of Defense for Command, Control, Communciations and Intelligence inform the committee on the resolution of the differences between the Army and the NSA, and if the Army was to proceed with a SIGINT capability for the National Guard, the committee would expect detailed justification in future budget requests for the program as well as the development and implementation of procedures to control the collection and exploitation of SIGINT. To date, the issue has yet to be resolved.

The committee believes that serious legal and constitutional questions may be posed by National Guard SIGINT operations and that the Secretary of Defense should carefully review these questions in resolving the issue. Until such time that the issue is resolved, the committee cannot recommend authorization of tactical SIGINT assets for the National Guard and no authorization for National Guard SIGINT operations is contained in H.R. 4387.

Section 505 of the Intelligence Authorization Act for Fiscal Year 1987 directed the Secretary of Defense to establish an undergraduate training program (UTP) at the National Security Agency. Section 506 of the Act directed the Director of Central Intelligence to set up a UTP at the Central Intelligence Agency consistent with

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the provisions of Section 505. The committee's intent in creating UTP's was to assist CIA and NSA in attracting new minority employees and to facilitate the recruitment of students possessing academic skills in certain disciplines critical to intelligence functions, i.e. mathematics, engineering, computer science and foreign languages.

The committee hoped that through the UTP's CIA and NSA would be able to gain early access to a pool of talented potential employees whose skills are so necessary for the success of future missions of the two agencies.

In authorizing the UTP's, the committee expected that the programs would be consistent with each other. Specifically, the committee stated in its report accompanying the Fiscal Year 1987 Intelligence Authorization Act that the programs should provide salaries and certain expenses incident to employee assignments including, but not limited to matriculation fees, tuition, library and laboratory fees and the purchase or rental of books, materials and supplies.

The committee did not list payment of room and board to UTP participants, a feature incorporated by CIA. Such payments create a broad discrepancy in the two programs. The committee has expected such expenses would be a responsibility of the individual.

The committee also notes a disparity in the formula used by CIA and NSA to calculate a student's obligation to the individual agency upon completion of his or her undergraduate studies. It was and remains the committee's intent that for each year or partial year of education provided by NSA and CIA, the student would be obligated to serve in the employing agency for one and a half years. For a traditional four-year undergraduate program, assuming the school year is nine months, the committee would expect a student's obligation to compute to 54 months of required service. The committee views CIA's practice of subtracting months of summer employment from the total number of months spent in school to be an inappropriate interpretation.

The committee views these differences with concern and urges CIA to reconcile the differences in its program with NSA so as to achieve uniformity in the administration of both individual UTP's.

The committee recognizes and applauds the efforts of both agencies in recruiting students for the UTP's in such a short time frame. However, it is the belief of the committee that not enough effort is being put into recruiting students in high schools. The result of concentrating UTP efforts at colleges is that many qualified high school candidates who for financial reasons do not apply for admission to colleges are excluded from any possible consideration. These are the very students the UTP's were designed to attract.

The committee urges new efforts at focusing UTP's on high school candidates.

Committee Position

On April 14, 1988, the Permanent Select Committee on Intelligence, a quorum being present, approved the bill and by unanimous voice vote ordered it favorably reported.

Oversight Findings

With respect to clause 2(l)(3)(A) of Rule XI of the House of Representatives, the committee has held extensive hearings regarding the nature and conduct of the intelligence and intelligence-related activities of the U.S. Government in considering this legislation. This review is outlined under the section of this report describing the scope of the committee review. A wide range of recommendations regarding intelligence programs and their management has been included within the classified annex of this report.

Fiscal Year Cost Projections

With respect to clause 2(l)(3)(B) of Rule XI of the House of Representatives and Section 308(a) of the Congressional Budget Act of 1974, this legislation does not provide new budget authority or tax expenditures. The committee has attempted pursuant to clause 7(a)(1) of Rule XIII of the Rules of the House of Representatives to ascertain the outlays which will occur in fiscal year 1988 and the 5 years following if these amounts are appropriated. These estimates are contained in the classified annex and are in accordance with those of the executive branch.

Congressional Budget Office Estimate

With respect to clause 2(l)(3)(C) of Rule XI of the House of Representatives, the committee has received no report from the Congressional Budget Office.

Recommendations of the Committee on Government Operations

With respect to clause 2(l)(3)(D) of Rule XI of the House of Representatives, the committee has not received a report from the Committee on Government Operations pertaining to the subject of this bill.

Inflation Impact Statement

Pursuant to clause 2(l)(4) of Rule XI of the House of Representatives, the committee has attempted to determine the inflationary impact of the bill.

The committee finds no adequate method to identify the inflationary impact of the present legislation. Further, the bill does not provide specific budget authority but rather authorizations for appropriation. Hence, any inflationary impact would depend on the amounts actually appropriated and the strain that short supplies of materials, production capacity or other economic resources would place on industrial capacity.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 4387, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

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TITLE 10, UNITED STATES CODE

Subtitle A—General Military Law

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PART I—ORGANIZATION AND GENERAL MILITARY POWERS

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CHAPTER 4—OFFICE OF THE SECRETARY OF DEFENSE

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§ 136. Assistant Secretaries of Defense

(a) There are [eleven] *twelve* Assistant Secretaries of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of Defense may prescribe.

(2) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Reserve Affairs. He shall have as his principal duty the overall supervision of reserve component affairs of the Department of Defense.

[(3) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. He shall have as his principal duty the overall supervision of command, control, communications, and intelligence affairs of the Department of Defense.]

(3) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Intelligence. He shall have as his principal responsibility the overall supervision of intelligence and intelligence-related activities (including intelligence oversight, counterintelligence, covert action, preparation of threat assessments, and intelligence support for net assessments) of the Department of Defense. Such responsibility includes authority for coordination of all policy, planning, budgetary, and management matters within the Department respecting such activities. The Assistant Secretary shall report directly, without intervening review or approval, to the Secretary and Deputy Secretary of Defense.

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CHAPTER 21—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

Sec.

421. [Funds transfers for foreign cryptologic support.] *Funds for Foreign Cryptologic Support.*
422. Counterintelligence official reception and representation expenses.
423. Authority to use proceeds from counterintelligence operations of the military departments.
424. Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency.

[§ 421. Funds transfers for foreign cryptologic support

[The Secretary of Defense may use funds available to the Department of Defense for intelligence and communications purposes to pay for the expenses of arrangements with foreign countries for cryptologic support.]

§ 421. Funds for foreign cryptologic support

(a) The Secretary of Defense may use appropriated funds available to the Department of Defense for intelligence and communications purposes to pay for the expenses of arrangements with foreign countries for cryptologic support.

(b) The Secretary of Defense may use funds other than appropriated funds to pay for the expenses of arrangements with foreign countries for cryptologic support without regard for the provisions of law relating to the expenditure of United States Government funds, except that—

(1) no such funds may be expended, in whole or in part, by or for the benefit of the Department of the Defense for a purpose for which Congress had previously denied funds, and

(2) the authority provided by this subsection may not be used to acquire items or services of value for the United States that could otherwise be obtained by the use of appropriated funds.

(c) Any funds expended under the authority of this section shall be reported to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House pursuant to the provisions of title V of the National Security Act of 1947, as amended.

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[§ 1607. Exemption from disclosing organizational and personal data

[Notwithstanding the provisions of any other law, and except as provided herein and as required by section 552 or section 552a of title 5, United States Code, the Defense Intelligence Agency shall not be required to disclose the organization or any function of the Defense Intelligence Agency or the names, official titles, occupational series, grades, salaries or numbers of personnel employed by such Agency. This section shall not apply to information provided the Congress.]

§ 424. Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency

(a) Except as required by the President or as provided in subsection (b), the Secretary of Defense may not be required to disclose information with respect to—

(1) the organization or any function of the Defense Intelligence Agency; or

(2) the number of persons employed by or assigned or detailed to such Agency or the name, official title, occupational series, grade, or salary of any such person.

(b) This section does not apply—

(1) with respect to the provision of information to Congress; or

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(2) with respect to information required to be disclosed by section 552 or 552a of title 5.

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SECTION 5315 OF TITLE 5, UNITED STATES CODE

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.
Associate Administrator of the National Aeronautics and Space Administration.
Assistant Administrators, Agency for International Development (6).
Regional Assistant Administrators, Agency for International Development (4).
Under Secretary of the Air Force.
Under Secretary of the Army.
Under Secretary of the Navy.
Assistant Secretaries of Agriculture (7).
Assistant Secretaries of Commerce (11).
Assistant Secretaries of Defense [(11)]*(12).*
Assistant Secretaries of the Air Force (3).
Assistant Secretaries of the Army (5).
Assistant Secretaries of the Navy (4).
Assistant Secretaries of Health and Human Services (4).
Assistant Secretaries of the Interior (6).
Assistant Attorneys General (10).
Assistant Secretaries of Labor (10), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training.
Assistant Secretaries of State (15).
Assistant Secretaries of the Treasury (7).
Members, United States International Trade Commission (5).
Assistant Secretaries of Education (6).
General Counsel, Department of Education.
Inspector General, Department of Education.
Director of Civil Defense, Department of the Army.

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